

REMARKS

Claims 15-22, 33-35, 51-67, 84-103, 106 and 109 are pending. Claims 15-22, 33-35, 51-54, 84-90, 106 and 109 are under examination. The specification has been amended to correct informalities. Accordingly, these amendments do not raise an issue of new matter and entry thereof is respectfully requested.

Regarding the objections to the specification, the specification has been amended on page 6 to modify the description of Figure 5 and on page 8 to correct a typographical error in the description of Figure 13 as requested by the Examiner. Accordingly, Applicants respectfully request that the objection to the specification be withdrawn.

The rejection of claims 51-54 and 87-90 under the judicially created doctrine of obviousness-type double patenting as being allegedly unpatentable over claims 1-4, 36 and 37 of U.S. Patent No. 6,890,537 is respectfully traversed. Applicants respectfully submit that claims 51-54 and 87-90 of the present application, at best, could be viewed as directed to species of generic claims 1-4, 36 and 37 of U.S. Patent No. 6,890,537. As indicated in MPEP § 804(II)(B)(1), “the analysis employed in an obviousness-type double patenting determination parallels the guidelines for a 35 U.S.C. 103(a) rejection.” Further as indicated in MPEP § 2144.08(II)(A)(4) regarding the obviousness of a species when the prior art teaches a genus, the question is whether one skilled in the art would have been motivated to make the claimed invention as a whole and select the claimed species or subgenus from the disclosed prior art. Applicants respectfully submit that, based on the teaching in U.S. Patent No. 6,890,537, one skilled in the art would not have been able to select the species of theta defensin as recited in the claims. Therefore, Applicants respectfully submit that claims 51-54 and 87-90 of the present application are unobvious over claims 1-4, 36 and 37 of U.S. Patent No. 6,890,537. Accordingly, Applicants respectfully request that this rejection be withdrawn.

The provisional rejection of claims 15-22, 33-35, 51-54 and 84-90 under the judicially created doctrine of obviousness-type double patenting as allegedly unpatentable over claims 1, 16 and 17 of co-pending application serial No. 10/427,715 (US 2004/0014669 A1) is respectfully traversed. Applicants respectfully request that this rejection be held in abeyance until there is an indication of allowable subject matter. If the present application is deemed allowable prior to

serial No. 10/427,715, Applicants respectfully request that this provisional rejection be withdrawn.

The rejection of claims 15-22, 33-35 and 84-86 under the judicially created doctrine of obviousness-type double patenting as allegedly unpatentable over claims 1 and 23-25 of U.S. Patent No. 6,335,318 is respectfully traversed. Applicants respectfully maintain that claims 15-22, 33-35 and 84-86 of the present application, at best, could be viewed as directed to species of generic claims 1 and 23-25 of U.S. Patent No. 6,335,318. Applicants respectfully submit that, based on the teaching in U.S. Patent No. 6,335,318, one skilled in the art would not have been able to select the species of theta defensin as recited in the claims. Therefore, Applicants respectfully submit that claims 15-22, 33-35 and 84-86 of the present application are unobvious over claims 1 and 23-25 of U.S. Patent No. 6,335,318. Accordingly, Applicants respectfully request that this rejection be withdrawn.

The rejection of claims 106 and 109 under the judicially created doctrine of obviousness-type double patenting as allegedly unpatentable over claim 12 of U.S. Patent No. 6,514,727 is respectfully traversed. Applicants respectfully submit that claims 106 and 109 of the present application, at best, could be viewed as directed to species of generic claim 12. Applicants respectfully submit that, based on the teaching in U.S. Patent No. 6,514,727, one skilled in the art would not have been able to select the species of theta defensin as recited in the claims. Therefore, Applicants respectfully submit that claims 106 and 109 of the present application are unobvious over claim 12 of U.S. Patent No. 6,514,727. Accordingly, Applicants respectfully request that this rejection be withdrawn.

In light of the remarks herein, Applicants submit that the claims are now in condition for allowance and respectfully request a notice to this effect. The Examiner is invited to call the undersigned agent if there are any questions.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 502624 and please credit any excess fees to such deposit account.

Respectfully submitted,

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